

AMENDED IN ASSEMBLY SEPTEMBER 12, 2003

AMENDED IN ASSEMBLY SEPTEMBER 5, 2003

AMENDED IN ASSEMBLY AUGUST 25, 2003

AMENDED IN ASSEMBLY AUGUST 18, 2003

AMENDED IN ASSEMBLY JULY 9, 2003

SENATE BILL

No. 18

Introduced by Senators Burton, Chesbro, and Ducheny

December 2, 2002

An act to amend Section 815.3 of the Civil Code, to amend Sections 65040.2, 65351, 65453, and 65560 of, and to add Sections 65351.1 and 65562.5 to, the Government Code, to amend Sections 7050.5 and 7054 of the Health and Safety Code, and to amend Sections 5097.9, 5097.91, 5097.92, 5097.94, 5097.96, 5097.97, 5097.98, 5097.99, and 5097.995 of, to add Sections 5097.10, 5097.96.1, 5097.96.2, 5097.96.3, 5097.96.4, 5097.96.5, 5097.993, 21084.3, 21097, and 21097.5 to, and to amend the heading of Chapter 1.75 (commencing with Section 5097.9) of Division 5 of, the Public Resources Code, relating to Traditional Tribal Cultural Sites.

LEGISLATIVE COUNSEL'S DIGEST

SB 18, as amended, Burton. Traditional Tribal Cultural Sites.

(1) Existing law establishes the Native American Heritage Commission and authorizes the commission to bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place



of worship, religious or ceremonial site, or sacred shrine located on public property.

This bill would establish the Traditional Tribal Cultural Site (TTCS) Register and would require the commission to develop, maintain, and administer it, as specified. The bill would declare various powers and duties of the commission, including the duty to determine whether a proposed development project may cause a substantial adverse change in a TTCS. The bill would exempt specified projects, including those involving negligible expansion of use, replacement of an existing structure, and construction of small utility extensions, from the various requirements involved in that duty. The bill would establish procedures for challenging and reviewing the commission's determinations, including procedures to protect the confidentiality of any information that would create a risk of harm to a TTCS. The bill would exempt the TTCS Register from disclosure as a public record. The bill would make it a misdemeanor to intentionally release information about a TTCS, knowing that it is required to be held confidential, thereby creating a new crime and imposing a state-mandated local program.

(2) The existing California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also generally requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA provides some exemptions from its requirements for specified projects.

This bill would create additional exemptions from CEQA, but would prohibit an exemption from CEQA for a project that the commission determines may cause a substantial adverse change in a TTCS. The bill would specify certain unique procedures that a lead agency must follow when a project may adversely affect a TTCS. By imposing these additional duties on lead agencies, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that



reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) Native Americans have used, and continue to use, natural
4 settings, referred to as “Traditional Tribal Cultural Sites”, in the
5 conduct of ceremonies and spiritual practices that provide the
6 moral and ethical foundation of native societies and are essential
7 elements in tribal cultural traditions.

8 (2) Native American places of spiritual and ceremonial
9 importance reflect the tribes’ continuing cultural ties to the land
10 and to their ancestral heritage.

11 (3) These sites are used for prayer, vision quests,
12 medicine-making, and traditional ceremonies. They are
13 considered holy and sacrosanct by California’s Native American
14 people. Many are significant to the tribes’ cultural society and to
15 their continued existence as a people.

16 (4) To further and perpetuate the cultural tradition and spiritual
17 practices of California tribes, these Traditional Tribal Cultural
18 Sites require preservation.

19 (5) California had the largest aboriginal population in North
20 America before contact with non-Native Americans. Yet,
21 California Native American tribes suffered the greatest losses
22 from termination, removal and assimilation policies, including the
23 loss of a majority of their lands and Traditional Tribal Cultural
24 Sites. This devastation debilitated tribal cultural identity and
25 threatened the survival of California Native American people.



1 (6) In addition to the lingering effects of these historic policies,
2 the continued loss of Traditional Tribal Cultural Sites for more
3 than the past three centuries has caused further debilitating impacts
4 on the cultural traditions and tribal identity of California Native
5 Americans.

6 (b) In recognition of Native American tribal sovereignty and
7 the unique relationship between California state government and
8 California tribal governments, it is the intent of the Legislature, in
9 enacting this act, to accomplish all of the following:

10 (1) Recognize that Traditional Tribal Cultural Sites are
11 essential elements in tribal cultural tradition and identity.

12 (2) Provide protection for Traditional Tribal Cultural Sites
13 through listing on a confidential registry overseen by the Native
14 American Heritage Commission, and establish a legal framework
15 by which sites listed on, or eligible for listing on, the Traditional
16 Tribal Cultural Sites Registry may be defended and preserved.

17 (3) Protect the access to and ability of Native Americans to
18 engage in cultural and traditional practices in a meaningful way at
19 Traditional Tribal Cultural Sites through the facilitation of access
20 agreements and other methods of providing legal assurances to
21 both landowners and Native American tribes.

22 (4) Require meaningful consultation among the Native
23 American Heritage Commission, property owners, public
24 agencies, project proponents, and Native American tribes at the
25 earliest possible point in the planning, acquisition, and the
26 environmental review of a proposed development project that
27 might adversely impact a Traditional Tribal Cultural Site.

28 (5) Provide for the development of treatment agreements,
29 programmatic agreements, and mutually acceptable mitigation
30 agreements, and promote the avoidance of development of
31 Traditional Tribal Cultural Sites.

32 (6) Provide a measure of protection to Traditional Tribal
33 Cultural Sites on public lands and state-managed federal lands.

34 (c) *The Legislature does not intend by the enactment of the act*
35 *adding this section to substantially alter, change, or interfere with*
36 *the existing process of the California Environmental Quality Act*
37 *(Division 13 (commencing with Section 21000) of the Public*
38 *Resources Code), except to formalize a process for the*
39 *consideration of the impacts of a development on a Traditional*
40 *Tribal Cultural Site.*



1 SEC. 2. Section 815.3 of the Civil Code is amended to read:
2 815.3. Only the following entities or organizations may
3 acquire and hold conservation easements:

4 (a) A tax-exempt nonprofit organization qualified under
5 Section 501(c)(3) of the Internal Revenue Code and qualified to
6 do business in this state, that has as its primary purpose the
7 preservation, protection, or enhancement of land in its natural,
8 scenic, historical, agricultural, forested, or open-space condition
9 or use.

10 (b) The state or a city, county, city and county, district, or other
11 state or local governmental entity, if otherwise authorized to
12 acquire and hold title to real property and if the conservation
13 easement is voluntarily conveyed. No local governmental entity
14 may condition the issuance of an entitlement for use on the
15 applicant's granting of a conservation easement pursuant to this
16 chapter.

17 (c) A federally recognized California Indian tribe or a
18 nonfederally recognized California Indian tribe, band, or nation
19 listed on the Native American Contact List maintained by the
20 Native American Heritage Commission pursuant to subdivision
21 (d) of Section 5097.94 of the Public Resources Code.

22 SEC. 3. Section 65040.2 of the Government Code is amended
23 to read:

24 65040.2. (a) In connection with its responsibilities under
25 subdivision (l) of Section 65040, the office shall develop and adopt
26 guidelines for the preparation and content of the mandatory
27 elements required in city and county general plans by Article 5
28 (commencing with Section 65300) of Chapter 3 of Division 1 of
29 Title 7. For purposes of this section, the guidelines prepared
30 pursuant to Section 50459 of the Health and Safety Code shall be
31 the guidelines for the housing element required by Section 65302.
32 In the event that additional elements are hereafter required in city
33 and county general plans by Article 5 (commencing with Section
34 65300) of Chapter 3, the office shall adopt guidelines for those
35 elements within six months of the effective date of the legislation
36 requiring those additional elements.

37 (b) The office may request from each state department and
38 agency, as it deems appropriate, and the department or agency
39 shall provide, technical assistance in readopting, amending, or
40 repealing the guidelines.



1 (c) The guidelines shall be advisory to each city and county in
2 order to provide assistance in preparing and maintaining their
3 respective general plans.

4 (d) The guidelines shall contain the guidelines for addressing
5 environmental justice matters developed pursuant to Section
6 65040.12.

7 (e) The guidelines shall contain advice including
8 recommendations for best practices to allow for collaborative land
9 use planning of adjacent civilian and military lands and facilities.
10 The guidelines shall encourage enhanced land use compatibility
11 between civilian lands and any adjacent or nearby military
12 facilities through the examination of potential impacts upon one
13 another.

14 (f) The guidelines shall contain advice for addressing the
15 effects of civilian development on military readiness activities
16 carried out on all of the following:

17 (1) Military installations.

18 (2) Military operating areas.

19 (3) Military training areas.

20 (4) Military training routes.

21 (5) Military airspace.

22 (6) Other territory adjacent to those installations and areas.

23 (g) The guidelines shall contain advice for consulting with
24 ~~Native American tribes and the Native American Heritage~~
25 ~~Commission~~ *Native American tribes* for the preservation of sites
26 listed in the Traditional Tribal Cultural Site Register established
27 under subdivision (a) of Section 5097.96 of the Public Resources
28 Code, including procedures for protecting the confidentiality of
29 information concerning the specific identity, location, character or
30 use of those sites. “Native American tribe” and “Traditional
31 Tribal Cultural Site Register” shall have the meanings provided
32 in Section 5097.10 of the Public Resources Code.

33 (h) The office shall provide for regular review and revision of
34 the guidelines established pursuant to this section.

35 SEC. 4. Section 65351 of the Government Code is amended
36 to read:

37 65351. During the preparation or amendment of the general
38 plan, the planning agency shall provide opportunities for the
39 involvement of citizens, public agencies, public utility companies,
40 Native American tribes identified on the Native American Contact



1 List maintained by the Native American Heritage Commission
2 pursuant to subdivision (d) of Section 5097.94 of the Public
3 Resources Code, and civic, education, and other community
4 groups, through public hearings and any other means the city or
5 county deems appropriate.

6 SEC. 5. Section 65351.1 is added to the Government Code, to
7 read:

8 65351.1. Prior to adoption, revision, amendment, or update of
9 a city or county’s general plan, the city or county shall consult with
10 ~~the Native American Heritage Commission and any appropriate~~
11 *any appropriate* Native American tribes identified on the Native
12 American Contact List maintained by the commission for the
13 purpose of preserving the sites listed in the Traditional Tribal
14 Cultural Site Register (“TTCS Register”) that are located within
15 the city or county’s jurisdiction. An “appropriate Native
16 American tribe” and “TTCS Register” shall have the meanings
17 provided in Section 5097.10 of the Public Resources Code.
18 Consistent with the guidelines developed by the Office of Planning
19 and Research pursuant to Section 65040.2, cities and counties shall
20 protect the confidentiality of information concerning the specific
21 identity, location, character, or use of the listed sites.

22 SEC. 6. Section 65453 of the Government Code is amended
23 to read:

24 65453. (a) A specific plan shall be prepared, adopted, and
25 amended in the same manner as a general plan, except that a
26 specific plan may be adopted by resolution or by ordinance and
27 may be amended as often as deemed necessary by the legislative
28 body. Adoption or amendment of a specific plan shall be subject
29 to the consultation requirements of Section 65351.1.

30 (b) A specific plan may be repealed in the same manner as it is
31 required to be amended.

32 SEC. 7. Section 65560 of the Government Code is amended
33 to read:

34 65560. (a) “Local open-space plan” is the open-space
35 element of a county or city general plan adopted by the board or
36 council, either as the local open-space plan or as the interim local
37 open-space plan adopted pursuant to Section 65563.

38 (b) “Open-space land” is a parcel or area of land or water that
39 is essentially unimproved and devoted to an open-space use as



1 defined in this section, and that is designated on a local, regional
2 or state open-space plan as any of the following:

3 (1) Open space for the preservation of natural resources,
4 including, but not limited to, sites listed in the Native American
5 Traditional Tribal Cultural Site Register established under Section
6 5097.96 of the Public Resources Code, areas required for the
7 preservation of plant and animal life, including habitat for fish and
8 wildlife species; areas required for ecological and other scientific
9 study purposes; rivers, streams, bays and estuaries; areas adjacent
10 to military installations, military training routes, and restricted
11 airspace that can provide additional buffer zones to military
12 activities and complement the resource values of the military
13 lands; and coastal beaches, lakeshores, banks of rivers and
14 streams, and watershed lands.

15 (2) Open space used for the managed production of resources,
16 including, but not limited to, forest lands, rangeland, agricultural
17 lands and areas of economic importance for the production of food
18 or fiber; areas required for recharge of groundwater basins; bays,
19 estuaries, marshes, rivers and streams which are important for the
20 management of commercial fisheries; and areas containing major
21 mineral deposits, including those in short supply.

22 (3) Open space for outdoor recreation, including, but not
23 limited to, areas of outstanding scenic, historic and cultural value;
24 areas particularly suited for park and recreation purposes,
25 including access to lakeshores, beaches, and rivers and streams;
26 and areas that serve as links between major recreation and
27 open-space reservations, including utility easements, banks of
28 rivers and streams, trails, and scenic highway corridors.

29 (4) Open space for public health and safety, including, but not
30 limited to, areas that require special management or regulation
31 because of hazardous or special conditions such as earthquake
32 fault zones, unstable soil areas, flood plains, watersheds, areas
33 presenting high fire risks, areas required for the protection of water
34 quality and water reservoirs, and areas required for the protection
35 and enhancement of air quality.

36 SEC. 8. Section 65562.5 is added to the Government Code, to
37 read:

38 65562.5. If land designated, or proposed to be designated, as
39 open space contains a site listed in the Traditional Tribal Cultural
40 Site Register established under Section 5097.96 of the Public



1 Resources Code, the city or county in which the site is located shall
2 ~~consult with the Native American Heritage Commission and the~~
3 *consult the* appropriate Native American tribe, as defined by
4 Section 5097.10 of the Public Resources Code, for the purposes of
5 determining the level of confidentiality required to protect the
6 specific identity, location, character, or use of the listed site, and
7 developing proper treatment of the site in any corresponding
8 management plan, if one will be developed for the listed area.

9 SEC. 9. Section 7050.5 of the Health and Safety Code is
10 amended to read:

11 7050.5. (a) Every person who knowingly mutilates or
12 disinters, wantonly disturbs, or willfully removes any human
13 remains in or from any location other than a dedicated cemetery
14 without authority of law is guilty of a misdemeanor, except as
15 provided in Section 5097.99 of the Public Resources Code. This
16 subdivision does not apply to any person carrying out an
17 agreement developed pursuant to subdivision (o) of Section
18 5097.94 of the Public Resources Code or to any person authorized
19 to implement Section 5097.98 of the Public Resources Code.

20 (b) In the event of discovery or recognition of any human
21 remains in any location other than a dedicated cemetery, there shall
22 be no further excavation or disturbance of the site or any nearby
23 area reasonably suspected to overlie adjacent remains until the
24 coroner of the county in which the human remains are discovered
25 has determined, in accordance with Chapter 10 (commencing with
26 Section 27460) of Part 3 of Division 2 of Title 3 of the Government
27 Code, that the remains are not subject to the provisions of Section
28 27491 of the Government Code or any other related provisions of
29 law concerning investigation of the circumstances, manner and
30 cause of any death, and the recommendations concerning the
31 treatment and disposition of the human remains have been made
32 to the person responsible for the excavation, or to his or her
33 authorized representative, in the manner provided in Section
34 5097.98 of the Public Resources Code. The coroner shall make his
35 or her determination within two working days from the time the
36 person responsible for the excavation, or his or her authorized
37 representative, notifies the coroner of the discovery or recognition
38 of the human remains.

39 (c) If the coroner determines that the remains are not subject to
40 his or her authority and if the coroner recognizes the human



1 remains to be those of a Native American, or has reason to believe
2 that they are those of a Native American, he or she shall contact,
3 by telephone within 24 hours, the Native American Heritage
4 Commission.

5 SEC. 10. Section 7054 of the Health and Safety Code is
6 amended to read:

7 7054. (a) (1) Except as authorized pursuant to the sections
8 referred to in subdivision (b), every person who deposits or
9 disposes of any human remains in any place, except in a cemetery,
10 is guilty of a misdemeanor.

11 (2) Every licensee or registrant pursuant to Chapter 12
12 (commencing with Section 7600) or Chapter 19 (commencing
13 with Section 9600) of Division 3 of the Business and Professions
14 Code and the agents and employees of the licensee or registrant,
15 or any unlicensed person acting in a capacity in which a license
16 from the Cemetery and Funeral Bureau is required, who, except as
17 authorized pursuant to the sections referred to in subdivision (b),
18 deposits or disposes of any human remains in any place, except in
19 a cemetery, is guilty of a misdemeanor that shall be punishable by
20 imprisonment in a county jail not exceeding one year, by a fine not
21 exceeding ten thousand dollars (\$10,000), or both that
22 imprisonment and fine.

23 (b) Cremated remains may be disposed of pursuant to Sections
24 7054.6, 7116, 7117, and 103060.

25 (c) Subdivision (a) of this section does not apply to the reburial
26 of Native American remains under an agreement developed
27 pursuant to subdivision (o) of Section 5097.94 of the Public
28 Resources Code, or implementation of a recommendation or
29 agreement made pursuant to Section 5097.98 of the Public
30 Resources Code.

31 SEC. 11. The heading of Chapter 1.75 (commencing with
32 Section 5097.9) of Division 5 is amended to read:

33

34 CHAPTER 1.75. NATIVE AMERICAN HERITAGE AND TRADITIONAL
35 TRIBAL CULTURAL SITES

36

37 SEC. 12. Section 5097.9 of the Public Resources Code is
38 amended to read:

39 5097.9. A public agency and a private party using or
40 occupying public property, or operating on public property, under



1 a public license, permit, grant, lease, or contract made on or after
2 July 1, 1977, may not in any manner whatsoever interfere with the
3 free expression or exercise of Native American religion as
4 provided in the United States Constitution and the California
5 Constitution; nor shall any such agency or party cause significant
6 and irreparable damage to a Native American sanctified cemetery,
7 place of worship, religious or ceremonial site, or sacred shrine
8 located on public property, except on a clear and convincing
9 showing that the public interest and necessity so require. The
10 provisions of this chapter shall be enforced by the commission,
11 pursuant to Sections 5097.94 and 5097.97.

12 This chapter may not be construed to limit the requirements of
13 the California Environmental Quality Act (Division 13
14 (commencing with Section 21000)).

15 Nothing in this section may be construed to nullify protections
16 for Native American cemeteries under other statutes.

17 SEC. 13. Section 5097.10 is added to the Public Resources
18 Code, to read:

19 5097.10. As used in this chapter, the following terms have the
20 following meanings:

21 (a) “Appropriate Native American tribe” means a Native
22 American tribe determined by the commission to have attached
23 traditional tribal cultural significance to the TTCS at issue.

24 (b) “Commission” means the Native American Heritage
25 Commission.

26 (c) “Consultation” means the meaningful and timely process
27 of seeking, discussing, and considering carefully the views of
28 others, in a manner that is cognizant of all parties’ cultural values,
29 and where feasible, seeking agreement. Consultation between
30 government agencies and Native American tribes shall be
31 conducted in a way that is mutually respectful of each party’s
32 sovereignty. Consultation shall also recognize the tribe’s potential
33 need for confidentiality with respect to sites that have traditional
34 tribal cultural significance.

35 (d) “Consulting parties” means the appropriate Native
36 American tribes, owners of property within the site’s boundaries,
37 the project proponent, the lead agency, and public agencies with
38 jurisdiction over the area in which the effects of a project may
39 occur or having principal responsibility for carrying out or
40 ~~approving a project. Other individuals or organizations with a~~



1 ~~demonstrated interest in the project, due to the nature of their legal,~~
2 ~~cultural, or economic relation to the project or affected property,~~
3 ~~may participate at the commission’s discretion. The commission~~
4 ~~shall exercise that discretion in accordance with criteria adopted~~
5 ~~by the commission.~~ *approving a project.*

6 (e) “Final determination” means a final decision issued by the
7 commission regarding the listing of a site in the TTCS Register,
8 whether a TTCS may be affected by a proposed project, or whether
9 a proposed project may result in a substantial adverse change to a
10 TTCS.

11 (f) “Eligible for listing in the TTCS Register” means a site that
12 is not listed in the TTCS Register, but if the commission were to
13 consider the site for listing pursuant to Section 5097.96, it would
14 likely find that the site meets the criteria for listing. The
15 determination of eligibility may be delegated to the executive
16 secretary. The executive secretary shall comply with criteria
17 adopted pursuant to subdivision (b) of Section 5097.96 and with
18 procedures set forth in Section 5097.96.1.

19 (g) “Gathering site” means an area where traditional food,
20 plants, or other materials or cultural objects, including, but not
21 limited to, baskets, tools, ropes, nets, ceremonial items, clothing,
22 and personal adornments that are used in a traditional practice by
23 a Native American tribe, are gathered, collected, assembled, or
24 maintained.

25 (h) “Lead agency” has the same meaning as the definition in
26 Section 21067.

27 (i) “Native American Contact List” means the list developed
28 and maintained by the commission pursuant to subdivision (d) of
29 Section 5097.94 that identifies those Native American tribes to be
30 notified and consulted pursuant to this chapter and the
31 requirements of the California Environmental Quality Act
32 (Division 13 (commencing with Section 21000)).

33 (j) “Native American tribe” means a federally recognized
34 California Indian tribe listed on the Federal Register and any
35 nonfederally recognized California Indian tribe, band, or nation
36 listed on the Native American Contact List maintained by the
37 commission.

38 (k) “Project” has the same meaning as the definition in Section
39 21065.



1 (l) “Substantial adverse change in a TTCS” means a direct or
2 reasonably foreseeable indirect change to the physical
3 characteristics of a TTCS in a manner that would diminish the
4 traditional cultural significance of the TTCS.

5 (m) “Traditional Tribal Cultural Site” or “TTCS” means a site
6 listed in, or determined by the commission to be eligible for listing
7 in, the TTCS Register based on the criteria for listing established
8 by the commission through regulations adopted pursuant to
9 subdivision (b) of Section 5097.96. These criteria shall identify a
10 TTCS as a site that is traditionally associated with, or has served
11 as the site for engaging in activities related to, the traditional
12 beliefs, cultural practices, or ceremonies of a Native American
13 tribe. A TTCS shall be a reasonably delineated physical location
14 identifiable by physical characteristics. The TTCS Register is in
15 no way intended to infringe on Native American tribes’ sovereign
16 rights to define their own sites of religious and cultural
17 significance for their own purposes. The fact that a tribe has not
18 nominated a site for inclusion in the TTCS Register may not be
19 evidence that the site is not sacred or significant.

20 (n) “Traditional Tribal Cultural Site Register” or “TTCS
21 Register” means the Native American Traditional Tribal Cultural
22 Site Register established and maintained by the commission
23 pursuant to Section 5097.96.

24 SEC. 14. Section 5097.91 of the Public Resources Code is
25 amended to read:

26 5097.91. There is in state government a Native American
27 Heritage Commission, consisting of nine members appointed by
28 the Governor with the advice and consent of the Senate. The
29 executive secretary of the commission shall be appointed by the
30 Governor.

31 SEC. 15. Section 5097.92 of the Public Resources Code is
32 amended to read:

33 5097.92. (a) The nine-member commission shall be
34 composed of all the following members:

35 (1) Six members shall be elders, traditional people, or spiritual
36 leaders of California Native American tribes, nominated by Native
37 American organizations, tribes, or groups within the state. Two
38 members shall be from the northern region of the state, two
39 members from the central region, and two from the southern
40 region.



1 (2) Two members shall be recognized professionals in one or
2 more of the following disciplines: ethnohistory, archaeology,
3 anthropology, ethnography, or other related disciplines.

4 (3) One member shall represent the public or possess expertise
5 in fields of expertise the Governor deems necessary or desirable
6 to enable the commission to carry out its responsibilities.

7 (b) Each member of the commission shall have one vote.
8 Except as provided in subdivision (c), a majority of the total
9 appointed membership of the commission shall constitute a
10 quorum. Any action taken by the commission under this chapter
11 requires a majority vote of the members present at the meeting of
12 the commission, with a quorum being present, unless otherwise
13 specifically provided for in this chapter.

14 (c) (1) The commission may appoint regional committees of
15 three members of the commission to carry on investigations,
16 inquiries, or hearings pursuant to Sections 5097.96, 5097.96.1,
17 5097.96.2, and 5097.96.3. Each regional committee shall be
18 comprised of the two tribal commission members representing the
19 region where the subject TTCS or proposed TTCS is located. The
20 final determination of the three-member committee shall become
21 the final determination of the commission unless appealed to the
22 full commission.

23 (2) An appeal of a final determination by the regional
24 committee may be filed by any party to the procedure within 30
25 days of issuance of the regional committee's final determination.

26 (3) All actions of the regional committee are subject to Section
27 5097.96.5.

28 SEC. 16. Section 5097.94 of the Public Resources Code is
29 amended to read:

30 5097.94. The commission shall have the following powers
31 and duties:

32 ~~(a) For purposes of the California Environmental Quality Act~~
33 ~~(Division 13 (commencing with Section 21000)) only, the~~
34 ~~commission shall constitute a trustee agency having jurisdiction~~
35 ~~by law over Native American archaeological resources and~~
36 ~~TTCSs. The trustee agency status of the commission does not~~
37 ~~impair or alter any sovereign rights that a Native American tribe~~
38 ~~may have with respect to any of those resources.~~

39 ~~(b)~~



1 (a) To identify and catalog places of special religious or social
2 significance to Native Americans, and known graves and
3 cemeteries of Native Americans on private lands. The
4 identification and cataloging of known graves and cemeteries
5 shall be completed on or before January 1, 1984. The commission
6 shall notify landowners on whose property those graves and
7 cemeteries are determined to exist, and shall identify the Native
8 American tribe most likely descended from those Native
9 Americans who may be interred on the property.

10 ~~(e)~~

11 (b) To make recommendations relative to sites listed in the
12 TTCS Register that are located on private lands, and are
13 inaccessible to Native Americans, and have cultural significance
14 to Native American tribes for acquisition by the state or other
15 public agencies for the purpose of facilitating or assuring access
16 thereto by the appropriate Native American tribes.

17 ~~(d)~~

18 (c) To develop and maintain the Native American Contact List.
19 That list shall identify those Native American tribes eligible to be
20 notified or consulted pursuant to this chapter and the California
21 Environmental Quality Act (Division 13 (commencing with
22 Section 21000)). The list shall include all Native American tribes,
23 as defined in subdivision (j) of Section 5097.10, and a designated
24 representative contact person and address for each tribe. For
25 purposes of this chapter, the commission shall develop criteria to
26 identify and include Native American tribes that do not have
27 federal recognition. For the purpose of complying with
28 requirements relating to notice and consultation, the list shall be
29 organized by counties or portions of counties to identify the Native
30 American tribe or tribes that have attached traditional cultural
31 significance to each county or portion thereof.

32 ~~(e)~~

33 (d) To make recommendations to the Legislature relative to
34 procedures and incentives that will voluntarily encourage private
35 property owners to preserve and protect sites listed in the TTCS
36 Register and to allow appropriate access to Native American tribes
37 for traditional tribal cultural activities.

38 ~~(f)~~

39 (e) To employ and prescribe duties for staff members as
40 necessary to carry out the provisions of this chapter.



1 ~~(g)~~
 2 (f) To employ an attorney at law and assistant attorneys as
 3 necessary. The attorney shall act as the attorney and legal adviser
 4 of the commission, and shall have duties, including, but not limited
 5 to, representing the commission before public agencies. If the
 6 Attorney General is unable to represent the commission in a
 7 judicial proceeding due to a conflict of interest or other reason, the
 8 commission may be represented by the commission’s attorney or
 9 a private attorney pursuant to Section 11040 of the Government
 10 Code.

11 ~~(h)~~
 12 (g) To accept grants or donations, real or in kind, to carry out
 13 the purposes of this chapter.

14 ~~(i)~~
 15 (h) To make recommendations to the Director of Parks and
 16 Recreation and the California Arts Council relative to the
 17 California State Indian Museum and other Indian matters touched
 18 upon by department programs.

19 ~~(j)~~
 20 (i) To bring an action to prevent significant and irreparable
 21 damage to, or assure appropriate access for Native Americans to,
 22 a Native American sanctified cemetery, place of worship, religious
 23 or ceremonial site, sacred shrine, or sites listed in the TTCS
 24 Register located on public property, pursuant to Section 5097.97.
 25 If the court finds that significant and irreparable damage will occur
 26 or that appropriate access will be denied, and appropriate
 27 mitigation measures are not available, it shall issue an injunction,
 28 unless it finds, on clear and convincing evidence, that the public
 29 interest and necessity require otherwise. The Attorney General
 30 shall represent the commission and the state in litigation
 31 concerning affairs of the commission, unless the Attorney General
 32 has determined to represent the agency against whom the
 33 commission’s action is directed, in which case the commission
 34 shall be authorized to represent itself or employ other counsel as
 35 needed. In any action to enforce the provisions of this subdivision
 36 the commission shall introduce evidence showing that a cemetery,
 37 place, site, or shrine has been historically regarded as a sacred or
 38 sanctified place by Native American people and represents a place
 39 of unique historical and cultural significance to a Native American
 40 tribe.



1 ~~(k)~~

2 (j) To request and utilize the advice and service of all federal,
3 state, local, and regional agencies.

4 ~~(l)~~

5 (k) To assist Native American tribes in obtaining appropriate
6 access to and protection for sites listed in the TTCS Register that
7 are located on public or private lands for ceremonial or spiritual
8 activities.

9 ~~(m)~~

10 (l) To assist state agencies in any negotiations with agencies of
11 the federal government for the protection of TTCSs that are
12 located on federal lands.

13 ~~(n)~~

14 (m) To mediate, upon application of either of the parties,
15 disputes arising between landowners and known descendents
16 relating to the treatment and disposition of Native American
17 human burials, skeletal remains, and items associated with Native
18 American burials.

19 ~~(o)~~

20 (n) To assist interested landowners in developing agreements
21 with appropriate Native American tribes for leaving in place,
22 treating or disposing of, with appropriate dignity, the human
23 remains and any items associated with Native American burials.
24 The agreements shall provide protection to Native American
25 human burials and skeletal remains from vandalism and
26 inadvertent destruction and provide, where remains are not left in
27 place, for sensitive treatment and disposition of Native American
28 burials, skeletal remains, and associated grave goods consistent
29 with the planned use of, or the approved project on, the land. The
30 commission shall adopt guidelines governing the process and
31 requirements for Native American monitoring.

32 ~~(p)~~

33 (o) To adopt criteria and procedures for the TTCS Register and
34 oversee the administration of the TTCS Register.

35 ~~(q)~~

36 (p) To oversee the administration of, and participate in the
37 consultation process pursuant to, this chapter and adopt, as
38 necessary, consultation process criteria and procedures.

39 ~~(r)~~



1 (q) To assist Native American tribes in obtaining access to and
2 protection for gathering sites that are not included in the TTCS
3 Register, and to develop criteria to assist in the identification of
4 feasible or potentially feasible measures to avoid or mitigate
5 potential impacts to gathering sites.

6 ~~(s)~~

7 (r) To develop and maintain a site records check service for the
8 purpose of providing limited information, consistent with the
9 confidentiality requirements of Section 5097.96.5, on the
10 presence or absence of a site on the TTCS Register or a site that
11 has been nominated for listing. The Native American Heritage
12 Commission shall identify the appropriate Native American tribes
13 on the Native American Contact List for the site.

14 ~~(t)~~

15 (s) To adopt rules and regulations, as necessary, to carry out the
16 provisions of this chapter in conformity with the provisions of
17 Chapter 3.5 (commencing with Section 11340) of Part 1 of
18 Division 3 of Title 2 of the Government Code. The commission
19 may not begin listing TTCSs on the TTCS Register, or make a
20 determination about whether a site is eligible to be listed in the
21 TTCS Register, until the 30th day after the date of filing with the
22 Secretary of State the initial set of regulations to implement
23 subdivision (d) of Section 5097.94, subdivisions (b) and (c) of
24 Section 5097.96, or subdivision (a) of Section 5097.96.5,
25 whichever occurs last. The commission may not make a
26 determination pursuant to Section 5097.96.1 or 5097.96.2, or
27 identify project changes or mitigation measures pursuant to
28 Section 5097.96.3 until the 121st day after the date of filing with
29 the Secretary of State the initial set of regulations to implement
30 subdivision (d) of Section 5097.94, subdivisions (b) and (c) of
31 Section 5097.96, or subdivision (a) of Section 5097.96.5,
32 whichever occurs last. The commission shall adopt these initial
33 sets of regulations within one year of the effective date of the act
34 that amended this section during the 2003–04 Regular Session of
35 the Legislature. In drafting and promulgating rules and regulations
36 that may have substantial effects on the Native American tribes,
37 the commission shall consult with, and allow for, active
38 participation by the Native American tribes.

39 SEC. 17. Section 5097.96 of the Public Resources Code is
40 amended to read:



1 5097.96. (a) The Traditional Tribal Cultural Site Register or
2 TTCS Register is hereby established and shall be maintained and
3 administered by the commission. The TTCS Register is in no way
4 intended to infringe on Native American tribes' sovereign rights
5 to define their own sites of religious and cultural significance for
6 their own purposes. The fact that a tribe has not nominated a site
7 for inclusion in the TTCS Register may not be evidence that the
8 site is not sacred or significant.

9 (b) Consistent with the definition of TTCS in Section 5097.10,
10 the commission shall adopt regulations establishing criteria to list
11 sites in the TTCS Register. The commission shall acknowledge
12 that Native American tribes possess special expertise in
13 identifying TTCSs and shall consult with them and encourage
14 active participation in developing the criteria consistent with
15 subdivision (t) of Section 5097.94.

16 (c) The commission on its own initiative, or any appropriate
17 Native American tribe, may nominate a site for listing in the TTCS
18 Register. The commission shall adopt regulations establishing
19 procedures for the nomination and listing of sites in the TTCS
20 Register in a manner that shall protect the confidentiality concerns
21 of Native American tribes. The procedures shall provide the
22 following:

23 (1) All requests to the commission for nomination of sites in the
24 TTCS Register shall be supported by sufficient evidence to
25 facilitate meaningful review of the request.

26 (2) Prior to acting on the nomination of a site to be added to the
27 TTCS Register, the commission shall notify the Native American
28 tribe nominating the site, all owners of property within the site's
29 boundaries, and other appropriate Native American tribes, and
30 provide not less than 30 days for written comments on the
31 nomination. The commission shall accept and consider these
32 comments and any other comments it receives during the comment
33 period, and other appropriate information in determining whether
34 to list the site in the TTCS Register.

35 (3) Except where appropriate to maintain the confidentiality of
36 information concerning the specific identity, location, character,
37 or use of the proposed TTCS, the commission may seek and
38 consider the views of the public.

39 (4) The commission may hold a hearing to accept additional
40 comments regarding the requested nomination. Any hearing by



1 the commission to accept additional comments may be closed to
2 the public to maintain the confidentiality of information
3 concerning the specific identity, location, character, or use of the
4 site.

5 (5) The commission shall prepare proposed written findings to
6 support its proposed determination concerning the site nominated
7 for listing in the TTCS Register. The proposed findings shall
8 describe in general terms the traditional cultural significance of the
9 site, define its boundaries, and identify any appropriate Native
10 American tribes. The commission shall provide notice of its
11 proposed determination and findings to the parties identified in
12 paragraph (2), and shall provide those parties 30 days to submit
13 written comments to the commission regarding the proposed
14 determination and findings. The commission's proposed
15 determination and findings shall constitute a final determination
16 by the commission if no comments are submitted to the
17 commission during the 30-day comment period. If written
18 comments are submitted to the commission during that comment
19 period, the commission shall consider the comments, and may
20 modify the proposed determination and findings before making a
21 final determination.

22 (d) The commission, in accordance with procedures it adopts,
23 shall provide notice of a final determination to list a site in the
24 TTCS Register to the Native American tribe nominating the site,
25 all owners of property within the site's boundaries, and other
26 appropriate Native American tribes. ~~The owner of property that~~
27 ~~contains a site listed in the TTCS Register may at any time record~~
28 *commission shall record* in the office of the county recorder of the
29 county in which the site is located, and the county recorder shall
30 accept for recording, a written notice of a registered TTCS in the
31 form to be prescribed by the commission. That notice may only
32 refer generally and without specificity to the identity, location,
33 character, and use of the registered TTCS on the property.
34 Recording of a notice of a registered TTCS shall satisfy any legal
35 duty of the owner to disclose material facts with respect to the
36 registered TTCS. *The commission shall be exempt from liability*
37 *for any act or omission in connection with the recordation of this*
38 *notice.*

39 (e) The commission shall maintain a list of the sites on the
40 TTCS Register. The list and all documents pertaining to the list



1 shall be exempt from disclosure as a public record pursuant to
2 subdivision (r) of Section 6254 of the Government Code.

3 (f) Notwithstanding subdivisions (c) and (d), the commission
4 shall develop an expedited procedure to list eligible sites identified
5 under subdivisions (g) and (h) on a priority basis in the TTCS
6 Register. The commission shall acknowledge that Native
7 American tribes possess special expertise in identifying TTCSs
8 and shall consult with them and encourage active participation in
9 developing the expedited procedure.

10 (g) Within two years of the date of filing with the Secretary of
11 State the initial set of regulations to implement subdivision (d) of
12 Section 5097.94, subdivisions (b) and (c) of Section 5097.96, or
13 subdivision (a) of Section 5097.96.5, whichever occurs last, the
14 commission shall complete the evaluation of the eligibility for
15 listing in the TTCS Register of any site previously identified,
16 catalogued, or listed by the commission as a site with traditional
17 cultural significance to Native Americans. If the commission
18 makes a proposed determination not to include on the TTCS
19 Register any site previously so identified, catalogued, or listed by
20 the commission, it shall consult with the appropriate Native
21 American tribe before making a final determination.

22 (h) The commission may recommend sites listed in the TTCS
23 for listing by the State Historic Preservation Officer for inclusion
24 in the California Register. The commission may also determine
25 that a site that is listed in the National Register of Historic Places
26 or the California Register of Historical Resources may be eligible
27 for listing in the TTCS Register. In making this determination, the
28 commission shall consult with the State Historic Preservation
29 Officer, and the State Historic Preservation Officer shall cooperate
30 and assist the commission.

31 (i) Any determination by the commission to list a site on the
32 TTCS Register shall be exempt from the California
33 Environmental Quality Act (Division 13 (commencing with
34 Section 21000)).

35 (j) The listing of a TTCS in the TTCS Register, or the
36 determination that a site is eligible for listing pursuant to Section
37 5097.96.1, does not in itself create an interest in real property.

38 SEC. 18. Section 5097.96.1 is added to the Public Resources
39 Code, to read:



1 5097.96.1. (a) Upon receipt of a timely written request for
2 consultation pursuant to paragraph (1) of subdivision (d) of
3 Section 21097 by an appropriate Native American tribe *or the*
4 *project proponent*, the commission shall promptly initiate
5 consultation with the consulting parties to determine whether the
6 proposed project may cause a substantial adverse change in a
7 TTCS, and if so, whether there are project changes or mitigation
8 measures that will avoid or reduce the substantial adverse change.
9 In making this determination, the commission shall ascertain
10 whether the site is listed or is eligible for listing in the TTCS
11 Register. Except where appropriate to maintain the confidentiality
12 of information concerning the specific identity, location,
13 character, or use of the TTCS, the commission may consider the
14 views of the public.

15 (b) If the site is not registered in the TTCS Register, an
16 appropriate Native American tribe may ask the commission for a
17 determination that the site is eligible for listing in the TTCS
18 Register. The determination of eligibility may be delegated to the
19 executive secretary. The executive secretary shall, if the power is
20 delegated by the commission, provide a signed statement setting
21 forth his or her opinion as to whether the site likely meets the
22 criteria for listing established pursuant to subdivision (b) of
23 Section 5097.96. In making this determination, the executive
24 secretary shall comply with criteria adopted by the commission.
25 The executive secretary shall seek the input of, and consult with,
26 appropriate consulting parties in making a determination pursuant
27 to this subdivision. An appeal of the executive secretary's
28 determination to the commission shall be made within 10 days of
29 the executive secretary's issuance of the determination, and the
30 appeal shall be heard and decided by the commission within 30
31 days of the appeal. An appeal may not be made to a regional
32 committee.

33 (c) If the commission determines that there is no TTCS present,
34 or that a TTCS is present, but the proposed project will not alter
35 the physical characteristics of the TTCS, that determination shall
36 constitute a final determination by the commission that the
37 proposed project will not cause a substantial adverse change in the
38 TTCS, and the commission's responsibilities under this section as
39 to that TTCS are fully discharged.



1 (d) In the absence of a final determination by the commission
2 pursuant to subdivision (c), the commission shall, not later than 45
3 days after receiving the notice required by subdivision (d) of
4 Section 21097, notify in writing, the lead agency, the project
5 proponent, and any appropriate Native American tribes that
6 consulted with the commission pursuant to this section, of its final
7 determination as to whether the proposed project may result in a
8 substantial adverse change in a TTCS and, if so, whether there are
9 project changes or mitigation measures that, if implemented, will
10 avoid or reduce any substantial adverse change to below a level of
11 significance.

12 (e) If the commission determines that the notice provided by
13 the lead agency does not include all of the information required by
14 subdivision (d) of Section 21097, the commission shall, within
15 five days of receipt of the notice, notify the lead agency that the
16 45-day review period has not begun and identify the necessary data
17 and information that is missing. The 45-day review period shall
18 begin when the commission notifies the lead agency that the
19 missing data and information have been received. The 45-day
20 period may be extended 15 days upon request by the commission
21 to the lead agency. Approval of longer or additional extension
22 requests is in the discretion of the lead agency. If the commission
23 has not issued its written determination or requested an extension
24 within the time prescribed by this subdivision, the commission's
25 inaction shall be deemed a final determination by the commission
26 that the proposed project will not result in a substantial adverse
27 change in a TTCS.

28 (f) The commission shall proceed in accordance with Section
29 5097.96.2 in the absence of a final determination pursuant to
30 subdivision (c) or a final determination that any substantial
31 adverse change in a TTCS will be avoided or reduced to below a
32 level of significance as a result of project changes or mitigation
33 measures agreed to by the commission, appropriate Native
34 American tribes that participated in the consultation process, the
35 lead agency, and the project proponent.

36 (g) The baseline conditions by which the commission makes
37 the determination pursuant to this section shall be the physical
38 environmental conditions as they exist, from both a local and
39 regional environmental perspective, at the time of making the
40 request for consultation with the commission or the filing of the



1 application for a proposed project with the lead agency, whichever
2 occurs earlier.

3 (h) This section does not apply to the following projects:

4 (1) The operation, repair, maintenance, permitting, leasing,
5 licensing, or minor alteration of an existing public or private
6 structure, facility, mechanical equipment, or topographical
7 feature, involving negligible or no expansion of use beyond that
8 existing at the time of the lead agency's determination, and
9 consisting of one of the following:

10 (A) An existing facility of both investor and publicly owned
11 utilities used to provide electric power, telecommunications,
12 natural gas, sewerage, or other public utility services.

13 (B) Maintenance of a fish screen, fish ladder, wildlife habitat
14 area, artificial wildlife waterway device, streamflow, spring or
15 waterhole, and stream channel (clearing of debris) to protect fish
16 and wildlife resources.

17 (2) The replacement or reconstruction of an existing structure
18 or facility where the new structure will be located on the same site
19 as the structure replaced, will have substantially the same purpose
20 and capacity as the structure replaced, and will consist of one of
21 the following:

22 (A) The replacement or reconstruction of an existing utilities
23 system or facility involving negligible or no expansion of capacity.

24 (B) The conversion of an overhead distribution system facility
25 to underground, including the connection to existing overhead
26 distribution lines where the surface is restored to the condition
27 existing prior to the undergrounding.

28 (3) The construction and location of water main, sewage,
29 electrical, telecommunications, gas, and other utility extensions,
30 including street improvements of reasonable length to serve the
31 construction, so long as the construction consists of limited
32 numbers of new, small facilities or structures, installation of small
33 new equipment and facilities in small structures, and the
34 conversion of existing small structures from one use to another
35 where only minor modifications are made in the exterior of the
36 structure.

37 SEC. 19. Section 5097.96.2 is added to the Public Resources
38 Code, to read:

39 5097.96.2. (a) If, pursuant to Section 5097.96.1, the
40 commission proceeds to act pursuant to this section, then not later



1 than 75 days thereafter, the commission shall notify in writing, the
2 lead agency, the project proponent, and any appropriate Native
3 American tribes that consulted with the commission, of its final
4 determination as to whether a proposed project will result in a
5 substantial adverse change to a TTCS. The 75-day period may be
6 extended 15 days upon request by the commission to the lead
7 agency. Approval of longer or additional extension requests is in
8 the discretion of the lead agency. If the commission has not issued
9 its written determination or requested an extension within the time
10 prescribed by this subdivision, the commission's inaction shall be
11 deemed a final determination by the commission that the proposed
12 project will not result in a substantial adverse change in a TTCS.

13 (b) Prior to making a final determination pursuant to
14 subdivision (a), the commission shall seek the input of and consult
15 with appropriate consulting parties. The commission shall initiate
16 that consultation by providing notice to appropriate consulting
17 parties within five days after determining to proceed pursuant to
18 this section. The consulting parties shall have 30 days from receipt
19 of the notice to provide written comments to the commission
20 regarding the potential for the proposed project to result in a
21 substantial adverse change in a TTCS. The commission shall
22 acknowledge that the appropriate Native American tribes possess
23 special expertise in participating in this comment process. Except
24 where appropriate to protect the confidentiality of information
25 concerning the specific identity, location, character, or use of the
26 TTCS, the commission may seek and consider public comment
27 and input.

28 (c) The commission shall accept and consider written
29 comments submitted to the commission pursuant to subdivision
30 (b), prior to making a final determination whether a proposed
31 project will result in a substantial adverse change to a TTCS. The
32 commission, in its discretion, may hold a hearing to accept
33 additional comments. A hearing by the commission to accept
34 additional comments may be closed to the public to maintain the
35 confidentiality of information concerning the specific identity,
36 location, character, or use of a TTCS.

37 (d) The commission shall prepare proposed written findings to
38 support its proposed determination pursuant to subdivision (a).
39 The proposed findings shall describe the basis for the proposed
40 determination by the commission. The commission shall provide



1 notice of its proposed determination and findings to the consulting
2 parties who were given notice pursuant to subdivision (b), and
3 shall provide those consulting parties with 10 days to submit
4 written comments to the commission regarding the proposed
5 determination and findings. The commission's proposed
6 determination and findings shall constitute a final determination
7 by the commission if no comments are submitted to the
8 commission during the comment period. If written comments are
9 submitted to the commission during the comment period, the
10 commission shall consider the comments, and modify the
11 proposed determination and findings, in its discretion, before
12 making a final determination consistent with procedures adopted
13 by the commission.

14 (e) A determination by the commission pursuant to this section
15 is exempt from the California Environmental Quality Act
16 (Division 13 (commencing with Section 21000)).

17 (f) The baseline conditions by which the commission makes
18 the determination pursuant to this section shall be the physical
19 environmental conditions as they exist, from both a local and
20 regional perspective, at the time of making the request for
21 consultation with the commission or the filing of the application
22 for a proposed project with the lead agency, whichever occurs
23 earlier.

24 SEC. 20. Section 5097.96.3 is added to the Public Resources
25 Code, to read:

26 5097.96.3. (a) Where ~~the commission~~, all appropriate Native
27 American tribes who participated in the consultation process; and
28 the project proponent agree to incorporate project changes or
29 mitigation measures that would avoid or reduce substantial
30 adverse changes in a TTCS to a less than significant level, the
31 commission shall identify those project changes or mitigation
32 measures in its findings and notice to the lead agency pursuant to
33 Section 5097.96.2.

34 (b) Where ~~the commission~~, all appropriate Native American
35 tribes who participated in the consultation process; and the project
36 proponent do not agree to project changes or mitigation measures
37 that would avoid or reduce substantial adverse changes to a TTCS,
38 the commission shall identify project changes or mitigation
39 measures, if any, that would avoid or reduce substantial adverse
40 changes to a TTCS to a less than significant level in its findings and



1 notice to the lead agency pursuant to Section 5097.96.2. *The*
2 *identified changes or measures shall be based on information*
3 *provided by the consulting parties or developed by the*
4 *commission.*

5 (c) Identification of project changes or mitigation measures by
6 the commission pursuant to this section is exempt from the
7 California Environmental Quality Act (Division 13 (commencing
8 with Section 21000)).

9 SEC. 21. Section 5097.96.4 is added to the Public Resources
10 Code, to read:

11 5097.96.4. (a) An appropriate Native American tribe
12 nominating a site to the TTCS Register, owners of property within
13 the site's boundaries, or other consulting parties may seek judicial
14 review of a final determination by the commission within 90 days
15 of a final determination regarding the listing of a site in the TTCS
16 Register and within 30 days of any other final determination. That
17 action shall be brought against the commission as a petition for a
18 writ of mandate pursuant to Section 1094.5 of the Code of Civil
19 Procedure.

20 (b) In a proceeding, whether in a trial or appellate court,
21 challenging a final determination of the commission, the court
22 shall protect the confidentiality of any information that would
23 create a risk of harm to the TTCS by disclosing, for example, its
24 specific identity, location, character, or use. If and to the extent
25 there is a risk of harm, the court shall conduct its proceedings in
26 camera and shall seal records of the proceeding and papers filed
27 with the court. In deciding whether there is a risk of harm to a
28 TTCS, the court may ask the commission to file a brief addressing
29 that issue and may, in the interim, seal records and papers and
30 conduct any hearings in camera until it makes a decision on the risk
31 of harm issue.

32 SEC. 22. Section 5097.96.5 is added to the Public Resources
33 Code, to read:

34 5097.96.5. (a) The commission shall adopt regulations
35 establishing procedures to maintain the confidentiality of
36 information concerning the specific identity, location, character,
37 or use of a TTCS.

38 (b) Notwithstanding the California Public Records Act
39 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
40 Title 1 of the Government Code), the Bagley-Keene Open Meeting



1 Act (Article 9 (commencing with Section 11120) of Chapter 1 of
2 Part 1 of Division 3 of Title 2 of the Government Code), or any
3 other law, no information obtained as a result of, or in connection
4 with, a nomination or consultation under this chapter that contains
5 a reference pertaining to the specific identity, location, character,
6 or use of a TTCS, may be released, except as provided in
7 subdivision (c). For purposes of this section, “information”
8 includes, but is not limited to, documents, records, the TTCS
9 Register itself, nomination forms, declarations, reports, maps,
10 letters, transcripts, minutes, comments, determinations, and
11 findings.

12 (c) The commission, owners of property within the site’s
13 boundaries, the project proponent, the appropriate Native
14 American tribes, other consulting parties authorized under this
15 chapter, and their respective attorneys and representatives may,
16 consistent with any procedures the commission adopts, access and
17 share with each other information for the purpose of participating
18 in the consultation process pursuant to this chapter.

19 (d) A person described in subdivision (c) who, in violation of
20 a regulation adopted pursuant to subdivision (a), intentionally
21 releases information, knowing that it is required to be held
22 confidential pursuant to this section, is guilty of a misdemeanor
23 punishable by a fine of ten thousand dollars (\$10,000) or by
24 imprisonment in the county jail for not more than one year, or both.

25 (e) This section does not apply in a case in which all appropriate
26 Native American tribes waive the application of this section.

27 SEC. 23. Section 5097.97 of the Public Resources Code is
28 amended to read:

29 5097.97. In the event that a Native American organization,
30 tribe, group, or individual advises the commission that a proposed
31 action by a public agency may cause significant and irreparable
32 damage to a Native American sanctified cemetery, place of
33 worship, religious or ceremonial site, or sacred shrine located on
34 public property, or may bar appropriate access thereto by Native
35 Americans, the commission shall conduct an investigation as to the
36 effect of the proposed action. Where the commission finds, after
37 a public hearing, that the proposed action would result in damage
38 or interference, the commission may recommend mitigation
39 measures for consideration by the public agency proposing to take
40 the action. If the public agency fails to accept the mitigation



1 measures, and if the commission finds that the proposed action
2 would do significant and irreparable damage to a Native American
3 sanctified cemetery, place of worship, religious or ceremonial site,
4 or sacred shrine located on public property, the commission may
5 ask the Attorney General to take appropriate legal action pursuant
6 to Section 5097.94.

7 SEC. 24. Section 5097.98 of the Public Resources Code is
8 amended to read:

9 5097.98. (a) Whenever the commission receives notification
10 of a discovery of Native American human remains from a county
11 coroner pursuant to subdivision (c) of Section 7050.5 of the Health
12 and Safety Code, it shall immediately notify those persons it
13 believes to be most likely descended from the deceased Native
14 American. The descendants may, with the permission of the owner
15 of the land, or his or her authorized representative, inspect the site
16 of the discovery of the Native American remains and may
17 recommend to the owner or the person responsible for the
18 excavation work means for avoiding, treating, or disposing of,
19 with appropriate dignity, the human remains and any associated
20 grave goods. The descendants shall complete their inspection and
21 make their recommendation within 24 hours of their notification
22 by the Native American Heritage Commission. The
23 recommendation may include the scientific removal and
24 nondestructive analysis of human remains and items associated
25 with Native American burials.

26 (b) Whenever the commission is unable to identify a
27 descendent, or the descendent identified fails to make a
28 recommendation, or the landowner or his or her authorized
29 representative rejects the recommendation of the descendent, and
30 the mediation provided for in subdivision (n) of Section 5097.94
31 fails to provide measures acceptable to the landowner, the
32 landowner or his or her authorized representative shall reinter the
33 human remains and items associated with Native American burials
34 with appropriate dignity on the property in a location not subject
35 to further subsurface disturbance.

36 (c) Notwithstanding the provisions of Section 5097.9, the
37 provisions of this section, including those actions taken by the
38 landowner or his or her authorized representative to implement
39 this section and any action taken to implement an agreement
40 developed pursuant to subdivision (o) of Section 5097.94, shall be



1 exempt from the requirements of the California Environmental
2 Quality Act (Division 13 (commencing with Section 21000)).

3 (d) Notwithstanding the provisions of Section 30244, the
4 provisions of this section, including those actions taken by the
5 landowner or his or her authorized representative to implement
6 this section, and any action taken to implement an agreement
7 developed pursuant to subdivision (o) of Section 5097.94 shall be
8 exempt from the requirements of the California Coastal Act of
9 1976 (Division 20 (commencing with Section 30000)).

10 SEC. 25. Section 5097.99 of the Public Resources Code is
11 amended to read:

12 5097.99. (a) A person may not obtain or possess any Native
13 American artifacts or human remains that are taken from a Native
14 American grave or cairn on or after January 1, 1984, except as
15 otherwise provided by law or in accordance with an agreement
16 reached pursuant to subdivision (o) of Section 5097.94 or pursuant
17 to Section 5097.98.

18 (b) A person who knowingly or willfully obtains or possesses
19 any Native American artifacts or human remains that are taken
20 from a Native American grave or cairn after January 1, 1988,
21 except as otherwise provided by law or in accordance with an
22 agreement reached pursuant to subdivision (o) of Section 5097.94
23 or pursuant to Section 5097.98, is guilty of a felony that is
24 punishable by imprisonment in the state prison.

25 (c) A person who removes, without authority of law, any
26 Native American artifacts or human remains from a Native
27 American grave or cairn with an intent to sell or dissect or with
28 malice or wantonness is guilty of a felony that is punishable by
29 imprisonment in the state prison.

30 SEC. 26. Section 5097.993 is added to the Public Resources
31 Code, to read:

32 5097.993. If any provision of this chapter or the application
33 thereof to any person or circumstance is held invalid, that
34 invalidity may not affect other provisions or applications of this
35 chapter that can be given effect without the invalid provision or
36 application thereof, and to this end the provisions of this chapter
37 are severable.

38 SEC. 27. Section 5097.995 of the Public Resources Code is
39 amended to read:



1 5097.995. (a) (1) Any person who unlawfully and
2 maliciously excavates upon, removes, destroys, injures, or defaces
3 a Native American historic, cultural, or sacred site, that is listed or
4 may be eligible for listing in the California Register of Historic
5 Resources pursuant to Section 5024.1 or the TTCS Register
6 pursuant to Section 5097.96, including any historic or prehistoric
7 ruins, any burial ground, any archaeological or historic site, any
8 inscriptions made by Native Americans at such a site, any
9 archaeological or historic Native American rock art, or any
10 archaeological or historic feature of a Native American historic,
11 cultural, or sacred site is guilty of a misdemeanor if the act was
12 knowingly committed with specific intent to vandalize, deface,
13 destroy, steal, convert, possess, collect, or sell a Native American
14 historic, cultural, or sacred artifact, art object, inscription, or
15 feature, or site and the act was committed as follows:

16 (A) On public land.

17 (B) On private land, by a person, other than the landowner, as
18 described in subdivision (b).

19 (2) A violation of this section is punishable by imprisonment
20 in the county jail for up to one year, by a fine not to exceed ten
21 thousand dollars (\$10,000), or by both that fine and imprisonment.

22 (b) This section does not apply to any of the following:

23 (1) Any act taken in accordance with, or pursuant to, an
24 agreement entered into pursuant to subdivision (o) of Section
25 5097.94.

26 (2) Any action taken pursuant to Section 5097.98.

27 (3) Any act taken in accordance with Section 21097 and other
28 applicable sections of the California Environmental Quality Act
29 (Division 13 (commencing with Section 21000)).

30 (4) Any act taken in accordance with the National
31 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

32 (5) Any act authorized under the Z'berg-Nejedly Forest
33 Practice Act of 1973 (Chapter 8 (commencing with Section 4511)
34 of Part 2 of Division 4).

35 (6) Any action taken with respect to a conservation easement
36 in accordance with Chapter 4 (commencing with Section 815) of
37 Division 2 of the Civil Code, or any similar nonperpetual
38 enforceable restriction that has as its purpose the conservation,
39 maintenance, or provision of physical access of Native Americans
40 to one or more Native American historic, cultural, or sacred sites,



1 or pursuant to a contractual agreement for that purpose to which
2 most likely descendents of historic Native American inhabitants
3 are signatories.

4 (7) Any otherwise lawful act undertaken by the owner, or an
5 employee or authorized agent of the owner acting at the direction
6 of the owner, of land on which artifacts, sites, or other Native
7 American resources covered by this section are found, including,
8 but not limited to, farming, ranching, forestry, improvements,
9 investigations into the characteristics of the property conducted in
10 a manner that minimizes adverse impacts unnecessary to that
11 purpose, and the sale, lease, exchange, or financing of real
12 property.

13 (8) Research conducted under the auspices of an accredited
14 postsecondary educational institution or other legitimate research
15 institution on public land in accordance with applicable permitting
16 requirements or on private land in accordance with otherwise
17 applicable law.

18 SEC. 28. Section 21084.3 is added to the Public Resources
19 Code, to read:

20 21084.3. (a) A project that may cause a substantial adverse
21 change, as defined in subdivision (l) of Section 5097.10, in a site
22 that is listed in the Traditional Tribal Cultural Site Register
23 established pursuant to Section 5097.95 may not be exempted
24 from this division pursuant to subdivision (a) of Section 21084.

25 (b) This section shall become operative on the 121st day after
26 the date of filing with the Secretary of State the initial set of
27 regulations adopted by the Native American Heritage
28 Commission to implement subdivision (d) of Section 5097.94,
29 subdivisions (b) and (c) of Section 5097.96, or subdivision (a) of
30 Section 5097.96.5, whichever occurs last.

31 SEC. 29. Section 21097 is added to the Public Resources
32 Code, to read:

33 21097. (a) A project that may cause a substantial adverse
34 change in a TTCS, as defined in subdivision (m) of Section
35 5097.10, is a project that may have a significant effect on the
36 environment. For purposes of this section, a TTCS is a site listed
37 in, or determined by the Native American Heritage Commission
38 to be eligible for listing in, the Traditional Tribal Cultural Site
39 Register established under Section 5097.96. A site that is not listed
40 in the TTCS Register is not precluded from being afforded



1 protection under this division so long as the commission
2 determines that the site is eligible for listing pursuant to
3 subdivision (b) of Section 5097.96.1.

4 (b) As used in this section, “substantial adverse change in a
5 TTCS” has the same meaning as in subdivision (l) of Section
6 5097.10.

7 (c) For purposes of this section, “Native American tribes” and
8 “appropriate Native American tribes” have the meaning provided
9 in subdivisions (a) and (j), respectively, of Section 5097.10.

10 (d) At the time that a lead agency determines that an activity is
11 a project and is not exempt from this division, the lead agency shall
12 provide written notice of the proposed project to the Native
13 American tribes identified on the Native American Contact List
14 pursuant to subdivision (d) of Section 5097.94 and to the Native
15 American Heritage Commission. The notice shall do all of the
16 following:

17 (1) Inform Native American tribes of their right to request
18 consultation, including for a determination of a site’s eligibility for
19 listing in the TTCS Register pursuant to 5097.96.1, ~~with the Native~~
20 ~~American Heritage Commission~~ within 20 days of the receipt of
21 notice by certified mail.

22 (2) Provide sufficient information describing the proposed
23 project, including a project map, to enable the Native American
24 tribes to consult with the commission to identify any TTCS that
25 may be affected by the proposed project.

26 (3) Include a copy of the service list.

27 (e) Upon receipt of a timely written request for consultation
28 pursuant to paragraph (1) of subdivision (d), the ~~Native American~~
29 ~~Heritage Commission shall promptly initiate consultation;~~
30 *consultation pursuant to subdivision (d) shall promptly be*
31 *initiated* consistent with Section 5097.96.1. Nothing in this section
32 precludes the Native American tribes from electing to participate
33 through the regular public comment process afforded by this
34 division.

35 (f) After receiving notice from the lead agency pursuant to
36 subdivision (d), the commission shall notify the lead agency and
37 any appropriate Native American tribes that consulted with the
38 commission, in writing of its final determination not later than the
39 expiration of the period determined pursuant to subdivision (e) of
40 Section 5097.96.1. Any written notice by the commission



1 determining that the proposed project will not cause a substantial
2 adverse change in a TTCS shall be a final determination and no
3 further consultation is required under this division.

4 (g) Whenever the Native American Heritage Commission
5 determines pursuant to Section 5097.96.1 that the proposed
6 project may cause a substantial adverse change in a TTCS and that
7 there are no project changes or mitigation measures agreed to that
8 will avoid or reduce the adverse change to below a level of
9 significance, the commission shall proceed with consultation, in
10 accordance with Section 5097.96.2. Any written notice by the
11 commission of its final determination pursuant to Section
12 5097.96.2 that a proposed project will not result in a substantial
13 adverse change to a TTCS shall constitute substantial evidence
14 upon which the lead agency may rely.

15 (h) To facilitate the consultation process, the lead agency shall;
16 ~~in cooperation with the commission, arrange for a visit to the~~
17 ~~arrange for a visit to the~~ project site by authorized representatives
18 of appropriate Native American tribes (as determined by the
19 commission) if the following conditions are met:

20 (1) The appropriate Native American tribe requests, in writing,
21 lead agency assistance to arrange for a visit to the project site.

22 (2) The request demonstrates that the visit is necessary to show
23 the location or boundaries of a TTCS, evaluate the potential for
24 substantial adverse change to a TTCS, or assist in the development
25 of project changes or mitigation measures.

26 (3) The request is submitted to the lead agency prior to the close
27 of public comment period.

28 (4) The lead agency secures permission from the landowner or
29 can escort the authorized representative onto the property within
30 existing authority to carry out inspections on the property.

31 (i) Where the commission makes a final determination that a
32 proposed project will result in a substantial adverse change to a
33 TTCS, the lead agency shall do the following:

34 (1) If the project proponent, ~~the commission,~~ and all
35 appropriate Native American tribes who participated in the
36 consultation process agree, as a result of the consultation required
37 by subdivision (g), to incorporate project changes or mitigation
38 measures that will avoid or reduce potential adverse changes to a
39 TTCS to below a level of significance, the lead agency shall
40 conclude that any adverse changes to a TTCS are less than



1 significant. The project changes or mitigation measures that
2 provide the basis for the lead agency’s determination shall be
3 identified in a confidential appendix to the final environmental
4 impact report or mitigated negative declaration. The project
5 changes or mitigation measures identified in the final
6 environmental impact report or mitigated negative declaration,
7 together with the concurrence of the appropriate Native American
8 tribes who participated in the consultation process; *and* the project
9 proponent ~~and the commission~~, shall constitute substantial
10 evidence supporting the lead agency’s conclusion that adverse
11 changes in a TTCS are less than significant.

12 (2) If the project proponent, the commission, and all
13 appropriate Native American tribes who participated in the
14 consultation process do not agree to project changes or mitigation
15 measures, as a result of the consultation required by subdivision
16 (g), the commission shall evaluate and provide a written
17 recommendation to the lead agency identifying project changes or
18 mitigation measures, if any, that would avoid or reduce potential
19 adverse changes to a TTCS. The lead agency, when making
20 findings required by paragraph (1) of subdivision (a) of Section
21 21081, or when adopting a mitigated negative declaration
22 pursuant to paragraph (2) of subdivision (c) of Section 21080, shall
23 consider the recommendation of the commission and shall adopt
24 all project changes or mitigation measures necessary to avoid or
25 reduce substantial adverse changes to any TTCS identified
26 pursuant to this section that the lead agency determines, based on
27 substantial evidence in light of the whole record, are feasible.

28 (j) (1) When making the findings required by subdivision (b)
29 of Section 21081, a public agency may not approve or carry out a
30 project that will result in a substantial adverse change in a TTCS
31 unless it has provided notice to, and made a good faith ~~effort to~~
32 ~~consult with the Native American Heritage Commission and effort~~
33 *to consult with* all appropriate Native American tribes, and unless
34 the public agency finds that all ~~means~~ *feasible means identified by*
35 *the Native American Heritage Commission or a tribe* for
36 preserving the TTCS have been considered to the maximum extent
37 practicable.

38 (2) If a project located on state lands or federal lands managed
39 by the state will result in a substantial adverse change in a TTCS,
40 a public agency may not approve, carry out, or subsidize the



1 project unless the lead agency, based on substantial evidence in the
2 record, does one of the following:

3 (A) Makes the finding described in paragraph (1) or (2) of
4 subdivision (a) of Section 21081, or both, with respect to the
5 project's affect on the TTCS.

6 (B) Finds there is no legal or feasible way to accomplish the
7 project purpose without causing the substantial adverse change, all
8 feasible mitigation or avoidance measures have been incorporated
9 into the project, and there is an overriding environmental, public
10 health, or public safety reason to approve the project.

11 The findings described in subparagraphs (A) and (B) may be
12 made only after the lead agency provides 30 days notice to any
13 appropriate Native American tribes and an opportunity for those
14 tribes to comment on the proposed finding. For purposes of this
15 paragraph, "federal lands" means any land or interest in land
16 owned by the United States, including a leasehold interest held by
17 the United States, except for Indian trust lands. "Indian trust
18 lands" are lands held in trust by the United States on behalf of
19 tribal governments or individuals. Indian trust lands are
20 predominantly, though not solely, reservation lands.

21 ~~(k) For purposes of this division, the Native American Heritage
22 Commission shall be considered a trustee agency having
23 jurisdiction by law over Native American archeological resources
24 and TTCSs. The trustee agency status of the commission may not
25 be construed to impair or alter any sovereign rights a Native
26 American tribe may have with respect to any of those resources.~~

27 (3) Paragraph (2) does not apply to any of the following:

28 (A) Any replacement, repair, or reconstruction project for the
29 production or transport of crude oil, natural gas, liquified natural
30 gas, or other fuels.

31 (B) Any replacement, repair, or reconstruction project for the
32 manufacture, storage, or supply of petroleum products or other
33 fuels.

34 (C) Any replacement, repair, or reconstruction project for the
35 lease renewal or modification of docks, wharves, ports, or related
36 petroleum facilities, including facilities to receive, regasify, or
37 store liquified natural gas.

38 (D) Any project for the construction or modification of
39 facilities to receive, regasify, or store liquified natural gas.



1 *However, this paragraph may not be construed to exempt these*
2 *projects from any other requirement of this division.*

3 *(k) The lead agency and any responsible agency for the*
4 *proposed project may issue a permit for a project with a significant*
5 *impact on a TTCS if the affected tribe has received notice of, and*
6 *has failed to comment on the proposed mitigation measures during*
7 *the consultation process provided in Section 5097.96.1 or*
8 *5097.96.2, the comment period established in Section 21091, or*
9 *any public hearing required pursuant to this division.*

10 (l) (1) On or before January 1, 2005, any state agency that
11 administers, as a lead agency, a regulatory program certified by the
12 Secretary of the Resources Agency pursuant to Section 21080.5
13 shall comply with the requirements set forth in this section unless
14 the agency submits to the secretary an explanation detailing how
15 the certified regulatory program meets the criteria in paragraph (2)
16 and therefore should remain unchanged. The explanation shall
17 include all of the following:

18 (A) A written summary and overview of the certified
19 regulatory program, including a detailed description of its analysis
20 of impacts to TTCSs or Native American archaeological
21 resources.

22 (B) Citations to the program's provisions for notice and
23 consultation with appropriate Native American tribes and the
24 Native American Heritage Commission.

25 (C) Citations to the program's provisions incorporating the
26 Native American Heritage Commission's final determinations of
27 substantial adverse change in TTCSs.

28 (D) A written summary of how a meaningful consultation
29 process, as defined in Section 5097.10, was incorporated.

30 If a state agency administering a certified regulatory program
31 makes a timely submittal pursuant to this paragraph, the regulatory
32 program is not subject to Chapter 1.75 (commencing with Section
33 5097.9) of Division 5 and any other applicable provision of this
34 division that pertains to TTCSs, pending completion of the
35 secretary's review pursuant to paragraph (2).

36 (2) On or before January 1, 2006, the Secretary of the
37 Resources Agency shall notify the state agency that makes the
38 submittal pursuant to paragraph (1) as to whether its program
39 provides all of the following:

40 (A) An adequate analysis of impacts to TTCSs.



1 (B) Adequate notice to, and consultation with, appropriate
2 Native American tribes and the Native American Heritage
3 Commission.

4 (C) Provisions for incorporating, to the maximum extent
5 practicable, final determinations of substantial adverse change in
6 a TTCS by the Native American Heritage Commission.

7 (D) A meaningful consultation process.

8 (3) Upon receipt of notice from the secretary that the state
9 agency's program provides all the elements listed in this
10 paragraph, the program shall be deemed to meet the objectives of
11 Chapter 1.75 (commencing with Section 5097.9) of Division 5 and
12 any other applicable provisions of this division that pertain to
13 TTCSs, and the program is therefore exempt from Chapter 1.75
14 (commencing with Section 5097.9) of Division 5 and from
15 subdivision (d) through (k), inclusive, (p), and (q) of this section.
16 If the secretary decides that the program does not provide all of the
17 elements listed in this paragraph, the secretary shall notify the state
18 agency that the program is not exempt and suggest changes to the
19 program. The secretary shall specify in writing the reasons for his
20 or her decision.

21 (4) A state agency administering a certified regulatory program
22 that receives notice pursuant to paragraph (3) that its program is
23 not exempt may resubmit a new explanation for consideration by
24 the secretary pursuant to paragraph (3).

25 (5) The secretary shall consult with the Native American
26 Heritage Commission in carrying out this subdivision.

27 (m) In the case of a project described in subdivision (c) of
28 Section 21065, prior to the filing of an application with the lead
29 agency, the project proponent may expedite the process by
30 requiring the lead agency to provide notice pursuant to subdivision
31 (d) and by providing the information required by paragraph (3) of
32 subdivision (d). Under this expedited notice procedure, the time
33 period determined pursuant to subdivision (e) of Section
34 5097.96.1 shall commence on the date the lead agency provided
35 notice pursuant to subdivision (d).

36 (n) Any proceeding or finding under this section is subject to
37 the confidentiality provisions of Section 5097.96.5.

38 (o) In all actions or proceedings brought pursuant to this
39 section, including the hearing of an action or proceeding on appeal
40 from the decision of a lower court, all courts shall protect the



1 confidentiality of information that would create a risk of harm to
2 the TTCS by disclosing, for example, its specific identity, location,
3 character, or use. If and to the extent there is a risk of harm, the
4 court shall conduct its proceedings in camera and shall seal records
5 of the proceeding and papers filed with the court. In deciding
6 whether there is a risk of harm to a TTCS, the court may ask the
7 commission to file a brief addressing that issue and may, in the
8 interim, seal records and papers and conduct hearings in camera
9 until it makes a decision on the risk of harm issue.

10 (p) Any person who consulted with the Native American
11 Heritage Commission pursuant to Section 5097.96.1, 5097.96.2,
12 or 5097.96.3 and presented to the Native American Heritage
13 Commission and the lead agency an objection to the approval of
14 the project and the alleged grounds for noncompliance with this
15 division, orally or in writing during the comment period, is
16 deemed to have complied with Section 21177; provided, however,
17 that any action or proceeding to challenge a final determination of
18 the Native American Heritage Commission pursuant to Chapter
19 1.75 (commencing with Section 5097.09) of Division 5 shall be
20 brought pursuant to Section 5097.96.4.

21 (q) (1) For a project defined by subdivision (c) of Section
22 21065, the lead agency shall, prior to a determination pursuant to
23 Section 21080.1, consult with ~~the Native American Heritage~~
24 ~~Commission~~ and the appropriate Native American tribes to
25 identify the existence of, or the probable likelihood of, Native
26 American human remains and associated grave goods.

27 (2) If, as a result of the consultation required by paragraph (1),
28 the lead agency determines that Native American human remains
29 and associated grave goods may be disturbed, the lead agency shall
30 ensure that the following steps are completed prior to approval of
31 the project:

32 (A) Develop an avoidance and mitigation plan in consultation
33 with any appropriate Native American tribes, ~~and the Native~~
34 ~~American Heritage Commission to prevent or minimize to prevent~~
35 ~~or minimize~~ destruction, removal, or reburial of the Native
36 American human remains and associated grave goods. The plan
37 shall address the potential discovery of Native American human
38 remains and associated grave goods, and potential reburial onsite
39 and disposition of cultural resources.



1 (B) The project proponent shall employ a Native American
2 monitor to monitor ground disturbance activities associated with
3 the proposed project in areas where Native American human
4 remains, associated grave goods, and cultural resources may be
5 discovered. Guidelines for monitoring adopted pursuant to
6 subdivision (o) of Section 5097.94 may be adopted by the Native
7 American Heritage Commission. In selecting a Native American
8 monitor, the project proponent shall give preference to Native
9 Americans with traditional ties to the project area.

10 (r) This section shall become operative on the 121st day after
11 the date of filing with the Secretary of State the initial set of
12 regulations adopted by the Native American Heritage
13 Commission to implement subdivision (d) of Section 5097.94,
14 subdivisions (b) and (c) of Section 5097.96, or subdivision (a) of
15 Section 5097.96.5, whichever occurs last.

16 (s) If any provision of this section or the application thereof to
17 any person or circumstance is held invalid, that invalidity may not
18 affect other provisions or applications of this section that can be
19 given effect without the invalid provision or application thereof,
20 and to this end the provisions of this section are severable.

21 (t) If the lead agency determines that a proposed project is
22 within the scope of a prior completed notice and consultation
23 process pursuant to this section, the lead agency shall include in the
24 notice provided pursuant to subdivision (d) a request that the
25 Native American Heritage Commission consult with the
26 appropriate Native American tribes and confirm that
27 determination not later than 20 days after receiving the notice.
28 Following consultation with the appropriate Native American
29 tribes, if the Native American Heritage Commission determines
30 that the prior notice and consultation process fully considered the
31 proposed project's impacts on any TTCS, it shall notify the lead
32 agency that it may rely on the prior completed consultation and
33 notice process, and that prior completed consultation shall
34 constitute a final determination by the Native American Heritage
35 Commission pursuant to Section 5097.96.1 or 5097.96.2.

36 (u) This section does not apply to a project that the United
37 States Secretary of Defense, or his or her designee, has determined
38 is necessary for national security.

39 (v) This section does not apply to the following projects:



1 (1) The operation, repair, maintenance, permitting, leasing,
2 licensing, or minor alteration of an existing public or private
3 structure, facility, mechanical equipment, or topographical
4 feature, involving negligible or no expansion of use beyond that
5 existing at the time of the lead agency's determination, and
6 consisting of one of the following:

7 (A) An existing facility of both investor and publicly owned
8 utilities used to provide electric power, telecommunications,
9 natural gas, sewerage, or other public utility services.

10 (B) Maintenance of a fish screen, fish ladder, wildlife habitat
11 area, artificial wildlife waterway device, streamflow, spring or
12 waterhole, and stream channel to protect fish and wildlife
13 resources.

14 (2) The replacement or reconstruction of an existing structure
15 or facility where the new structure will be located on the same site
16 as the structure replaced, will have substantially the same purpose
17 and capacity as the structure replaced, and will consist of one of
18 the following:

19 (A) The replacement or reconstruction of an existing utilities
20 system or facility involving negligible or no expansion of capacity.

21 (B) The conversion of an overhead distribution system facility
22 to underground, including the connection to existing overhead
23 distribution lines where the surface is restored to the condition
24 existing prior to the undergrounding.

25 (3) The construction and location of water main, sewage,
26 electrical, telecommunications, gas, and other utility extensions,
27 including street improvements of reasonable length to serve the
28 construction, so long as the construction consists of limited
29 numbers of new, small facilities or structures, installation of small
30 new equipment and facilities in small structures, and the
31 conversion of existing small structures from one use to another
32 where only minor modifications are made in the exterior of the
33 structure.

34 SEC. 30. Section 21097.5 is added to the Public Resources
35 Code, to read:

36 21097.5. No lead agency and no responsible agency may
37 approve a project in any area that is designated as Class C
38 (Controlled Use) or Class L (Limited Use) lands, or designated as
39 an Area of Critical Environmental Concern under the California
40 Desert Conservation Area Plan, as amended, by the Bureau of



1 Land Management of the United States Department of the Interior,
 2 pursuant to Section 1781 of Title 43 of the United States Code, in
 3 any case where, *not later than September 1, 2003*, the federal
 4 Advisory Council on Historic Preservation, pursuant to Section
 5 106 of the National Historic Preservation Act of 1966 (16 U.S.C.
 6 Sec. 470 et seq.), has recommended to any federal agency that
 7 approval for the project be denied because the project would
 8 effectively destroy the historical resources in the project area.

9 SEC. 31. No reimbursement is required by this act pursuant
 10 to Section 6 of Article XIII B of the California Constitution for
 11 certain costs that may be incurred by a local agency or school
 12 district because in that regard this act creates a new crime or
 13 infraction, eliminates a crime or infraction, or changes the penalty
 14 for a crime or infraction, within the meaning of Section 17556 of
 15 the Government Code, or changes the definition of a crime within
 16 the meaning of Section 6 of Article XIII B of the California
 17 Constitution.

18 However, notwithstanding Section 17610 of the Government
 19 Code, if the Commission on State Mandates determines that this
 20 act contains other costs mandated by the state, reimbursement to
 21 local agencies and school districts for those costs shall be made
 22 pursuant to Part 7 (commencing with Section 17500) of Division
 23 4 of Title 2 of the Government Code. If the statewide cost of the
 24 claim for reimbursement does not exceed one million dollars
 25 (\$1,000,000), reimbursement shall be made from the State
 26 Mandates Claims Fund.

27 _____

28 CORRECTIONS

29 **Text — Pages 6 and 15.**

30 _____

31

